

SENATE RECORD VOTE ANALYSIS

104th Congress

1st Session

Vote No. 583

November 17, 1995, 8:36 p.m.

Page S-17327 Temp. Record

BALANCED BUDGET ACT CONFERENCE/Physician Office Labs, PSOs

SUBJECT: Conference report to accompany the Balanced Budget Act of 1995 . . . H.R. 2491. Abraham motion to waive the Budget Act for the consideration of subtitle M Section 13301 and the provisions of section 8001 that will amend section 1853(f) of the Social Security Act.

ACTION: MOTION REJECTED, 54-45

SYNOPSIS: The conference report to accompany H.R. 2491, the Balanced Budget Act of 1995, will result in a balanced budget in seven years, as scored by the Congressional Budget Office (CBO). The report will also provide a \$245 billion middle-class tax cut, \$147.6 billion of which will be to provide a \$500 per child tax credit effective October 1, 1995.

Subtitle M, section 13301 of the conference report will give physicians the flexibility to conduct clinical tests (except for Papanicolaou Smear (PAP Smear) tests) in their offices as an adjunct to other services they provide without being subject to the Federal regulations devised under the Clinical Laboratory Improvement Act (CLIA; see vote No. 541). The provisions in section 1853(f) of the Social Security Act as provided in **section 8001** of the conference report will apply the antitrust "rule of reason" standard to provider-sponsored organizations: that enter into contracts to provide health care services to individuals under the terms of a MedicarePlus plan; and that exchange information on costs, sales, profitability, marketing, prices, or fees for health care products and services solely for the purpose of establishing PSOs. Further, the same standard will apply for health care groups that negotiate and enter into contracts with PSOs to provide health care services to individuals under the terms of MedicarePlus plans. ("PSOs" are health care plans that are owned and operated by doctors and hospitals without insurance companies acting as middlemen. Currently they must operate under the rules that apply to health maintenance organizations. Under this conference report, PSOs will be a MedicarePlus plan option for beneficiaries if they offer at least the required Medicare benefits. These PSOs will be subject to State regulation on solvency, marketing requirements, and quality standards. A PSO will be able to appeal to the Health and Human Services Secretary if it believes that a State is unduly delaying its application or if it believes it is being treated unfairly. The conference report will permit beneficiaries to receive Medicare under the traditional, fee-for-service (FFS) plan, or to enroll in a MedicarePlus plan. MedicarePlus plan options for receiving Medicare benefits will include PSOs, managed care plans (such as

(See other side)

YEAS (54)			NAYS (45)			NOT VOTING (0)	
Republicans (51 or 96%)		Democrats (3 or 7%)	Republicans (2 or 4%)		Democrats (43 or 93%)	Republicans (0)	Democrats (0)
Abraham	Helms	Baucus	Chafee	Akaka	Inouye		
Ashcroft	Hutchison	Breaux	Specter	Biden	Johnston		
Bennett	Inhofe	Nunn		Bingaman	Kennedy		
Bond	Jeffords			Boxer	Kerrey		
Brown	Kassebaum			Bradley	Kerry		
Burns	Kempthorne			Bryan	Kohl		
Campbell	Kyl			Bumpers	Lautenberg		
Coats	Lott			Byrd	Leahy		
Cochran	Lugar			Conrad	Levin		
Cohen	Mack			Daschle	Lieberman		
Coverdell	McCain			Dodd	Mikulski		
Craig	McConnell			Dorgan	Moseley-Braun		
D'Amato	Murkowski			Exon	Moynihan		
DeWine	Nickles			Feingold	Murray		
Dole	Pressler			Feinstein	Pell		
Domenici	Roth			Ford	Pryor		
Faircloth	Santorum			Glenn	Reid		
Frist	Shelby			Graham	Robb		
Gorton	Simpson			Harkin	Rockefeller		
Gramm	Smith			Heflin	Sarbanes		
Grams	Snowe			Hollings	Simon		
Grassley	Stevens				Wellstone		
Gregg	Thomas						
Hatch	Thompson						
Hatfield	Thurmond						
	Warner						

EXPLANATION OF ABSENCE:

1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:

AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

HMOs), FFS plans, and medical savings accounts (MSAs). MSAs will have to be paired with high-deductible insurance policies.)

When the Senate began consideration of the conference report, Senator Exon raised a point of order that subtitle M, section 13301 of the report, and the provisions of section 1853(f) of the Social Security Act as provided in section 8001 of the report, violated the Byrd rule of the Budget Act because they did not have a deficit impact. Senator Abraham then moved to waive the Budget Act for the consideration of those sections. Generally, those favoring the motion to waive favored those sections; those opposing the motion opposed those sections.

NOTE: The motion to waive the Budget Act requires a three-fifths majority (60) vote to succeed. Following the failure of the motion to waive, the point of order was ruled well taken. Under the terms of the Budget Act, the question before the Senate then became whether the Senate would recede from its amendment to H.R. 2491 and concur therein with a further amendment (which was the text of the conference report without the provisions stricken on the Exon point of order).

Those favoring the motion to waive contended:

We support both of the provisions that would be stricken by the Exon point of order. First, the exemption from the Clinical Laboratory Improvement Act (CLIA) for physician office laboratories should be supported in order to improve health care. A physician in private practice cannot afford to operate a large, fully equipped laboratory of the type that is required under CLIA. However, physicians' patients still need lab tests. Under current law, when they see patients in their offices, they cannot give them simple tests that they know that they need. Instead, they must send them to laboratories that meet the standards. In addition to the increased cost and inconvenience of this requirement, it is also dangerous for their patients. In rural areas especially, patients must travel literally hundreds of miles to get laboratory tests that should not be delayed. This fact often results in testing too late to prevent serious injury or death. Letting physicians perform simple, quick laboratory tests in their offices will solve this problem.

Second, the antitrust provision for provider-sponsored organizations (PSOs) will give Americans a new health-care option and will result in lower costs. PSOs are groups of doctors, hospitals, and other health care providers that offer their services on a capitated basis directly to patients instead of through an insurance company or other middleman. The intention is to reduce costs. This bill will allow PSOs to form and provide Medicare services under a "rule of reason" antitrust standard instead of under a "per se" standard. Under a rule of reason standard, PSOs will not be allowed to fix prices, divide markets, or exclude competitors. Anti-competitive behavior will be strictly illegal. However, if their activities are instead only to create a new health care option, to provide competition, to lower prices, and to provide better services, they will not be found to be illegal. If, in any area, a PSO locks up a market and raises prices, and is then sued for its actions, it will lose that suit under the rule of reason. Instead of judging a PSO as being per se anticompetitive, it will be judged by whether or not it actually is by looking at its actions.

The Exon point of order may be well taken under the rules of the Budget Act, but that fact does not make it wise for us to allow these provisions to be stricken. We urge Senators to recognize the value of these provisions, and to join us in voting to waive the Budget Act for their consideration.

Those opposing the motion to waive contended:

Argument 1:

This point of order, if sustained, will result in striking the conference report provisions on the Clinical Laboratory Improvement Amendments (CLIA) Act and the provisions on antitrust rules as they will apply to provider-sponsored organizations (PSOs). Both sets of provisions should be stricken. Before CLIA was passed in 1988, medical labs were often guilty of shoddy work. Before 1988, misdiagnosis of the AIDS/HIV virus was common, lab technicians frequently had no formal training, slides were often taken home, and dirty labs were tolerated. We do not want to return to pre-1988 days. The second part of the Exon motion is against the antitrust exemption in the conference report for PSOs. Basically, that exemption will allow PSOs to engage in any type of price-fixing or similar activity that they wish, and, instead of being held to the basic rule of antitrust law that such activities are "per se" illegal, they will be held to a much more lenient, nebulous standard of "reasonableness, taking into account all relevant factors affecting competition, in properly defined markets." Under current law, doctors are required to share financial risk before they are allowed to set fees collectively. Under PSOs, though, doctors do not share financial risk. Therefore, this provision is a very flagrant assault on a long-standing antitrust rule that is intended to benefit a special interest. Doctors would love to be able to engage in this type of anticompetitive behavior, but their patients would not benefit. In summary, both the CLIA provisions and the PSO antitrust provisions should be stricken, so we urge our colleagues to oppose the motion to waive the Budget Act for their consideration.

Argument 2:

These antitrust provisions are extraneous under the Byrd rule, and should therefore be stricken, though we believe that the idea behind them may have merit and should be examined further.

NOVEMBER 17, 1995

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